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## 2008 Decisions

## Opinions of the United States Court of Appeals for the Third Circuit

8-8-2008

# Candido v. Hogsten

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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 07-1608

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CORDERO CANDIDO,  
Appellant

v.

KAREN F. HOGSTEN; K. CLOUSER;  
Lt. J. HEPNER

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Civil Action No. 06-cv-00490 )  
District Judge: Honorable James M. Munley

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
August 7, 2008  
Before: SLOVITER, BARRY and NYGAARD, Circuit Judges

(Opinion filed: August 8, 2008)

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OPINION

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PER CURIAM

Appellant, Cordero Candido, proceeding pro se, appeals from the District Court's order granting Appellees' motion for summary judgment. For the reasons that follow, we will affirm.

Candido filed a civil rights complaint pursuant to Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971) in the United States District Court for the Middle District of Pennsylvania. Appellees filed a motion for summary judgment, asserting that Candido failed to exhaust his administrative remedies. See 42 U.S.C. § 1997e(a). Candido filed several documents in opposition to Appellees' motion for summary judgment. After reviewing the documents that were submitted by Appellees and Candido, the Magistrate Judge recommended granting Appellees' motion for summary judgment. The District Court adopted the report and recommendation as the court's opinion and entered an order granting Appellees' motion for summary judgment. Candido appeals.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's order granting summary judgment. Kreimer v. Bureau of Police for Town of Morristown, 958 F.2d 1242, 1250 (3d Cir. 1992).

Summary judgment may only be granted where "there is no genuine issue as to any material fact and . . . the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). All facts and inferences must be construed in the light most favorable to the non-moving party. Boyle v. County of Allegheny Pa., 139 F.3d 386, 393 (3d Cir. 1998). The movant bears the burden of showing the absence of a genuine issue of material fact, but the non-moving party must produce more than a scintilla of evidence in his favor; he cannot simply rely on the unsupported allegations in his pleadings. Celotex

Corp. v. Catrett, 477 U.S. 317, 323-25 (1986).

An inmate is required to exhaust his administrative remedies prior to filing a civil rights action in federal court. 42 U.S.C. § 1997e(a). Exhaustion is mandatory; an inmate's unexhausted claim cannot be raised in a Bivens action. See Jones v. Bock, 127 S. Ct. 910, 918-19 (2007).

Candido admits that he failed to exhaust his administrative remedies, but avers that prison officials prevented him from doing so. We have held that when prison officials thwart an inmate's attempt from utilizing his administrative remedies, those remedies are "unavailable" to the inmate for purposes of exhaustion. Brown v. Croak, 312 F.3d 109, 113 (3d Cir. 2002). Candido, however, fails to substantiate his averment. See Celotex Corp., 477 U.S. at 325. He gives no details regarding the alleged interference or the manner in which prison officials prevented him from utilizing the administrative process. Furthermore, Appellees have submitted numerous documents demonstrating that Candido had access to the administrative process. Since his arrival at FCI Allenwood, Candido has filed forty-four administrative remedy requests, seven of which he has fully exhausted.<sup>1</sup> Moreover, Candido filed three grievances regarding the claims in his complaint. He failed to appeal the denial of his first grievance; he failed to follow the proper procedure for appealing his second grievance; and his third grievance was still an open matter when he filed his complaint. Based on the foregoing, we agree with the

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<sup>1</sup> None of Candido's exhausted grievances are related to the current appeal.

District Court's conclusion that there is no evidence in the record demonstrating that Appellees prevented Candido from pursuing his administrative remedies.

For the foregoing reasons, we will affirm the judgment of the District Court.